

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On July 25, 2017 appellant, then a 47-year-old modified city letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed herniated discs in his neck due to factors of his federal employment.<sup>3</sup> He noted that he first became aware of his condition and its relation to his federal employment on August 3, 2017.

In a narrative statement, appellant noted that on September 2, 2008 he had sustained a work-related traumatic injury, resulting in herniated discs at C6-7. He noted that he underwent cervical fusion at C6-7 and returned to modified-duty work. Appellant indicated that on August 3, 2017 he indicated that he was no longer able to perform his modified work duties as a result of debilitating neck pain. He alleged that his discs in the levels adjacent to his fusion had moved and resulted in his current condition.

On August 9, 2017 Dr. Robinson examined appellant due to his cervical herniated disc. He noted that appellant's cervical problem had worsened with persistent neck pain and weakness. Dr. Robinson diagnosed post-laminectomy syndrome. He found that appellant had been unable to work from August 3 through 13, 2017, and that he was to continue modified duty. Dr. Robinson indicated that appellant needed medication periodically and that in the future he would likely require a fusion at C5-6.

In a report dated September 27, 2017, Dr. Robinson examined appellant due to neck pain. He reported that the location of appellant's pain was in his anterior, lateral, and posterior neck. Dr. Robinson noted that the events surrounding the occurrence of the symptoms included twisting movement and that aggravating factors included flexion and turning his head. He further noted that appellant had previously undergone an anterior cervical discectomy and fusion. In a separate note of even date, Dr. Robinson diagnosed cervical disc herniation and found that appellant could work with restrictions. Appellant also provided an unsigned treatment note dated August 9, 2017.

In an October 18, 2017 development letter, OWCP advised appellant of the deficiencies of his occupational disease claim. It requested additional factual and medical evidence from appellant, and provided a questionnaire for his completion. OWCP afforded him 30 days for a response.

On October 18, 2017 appellant underwent an additional cervical MRI scan which demonstrated an anterior intervertebral disc fusion with a metallic fusion plate from C6-7 as well as degenerative disc disease from C2-5 increasing with proximity to appellant's fusion. It also

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<sup>3</sup> On September 10, 2008 appellant, then a 38-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 2, 2008 he injured his left shoulder, and arm reaching for and adjusting mail in trays while in the performance of duty. On October 21, 2008 he returned to regular-duty work. On January 28, 2009 OWCP accepted appellant's claim for left shoulder strain, left trapezius strain, and cervical strain under OWCP File No. xxxxxx432. On April 20, 2010 appellant accepted a light-duty position as a modified city letter carrier, with restrictions on reaching above the shoulder, lifting more than 20 pounds, and reaching and twisting more than six hours a day. By decision dated January 18, 2012, OWCP granted appellant a schedule award for 11 percent permanent impairment of the left upper extremity. By decision dated April 20, 2012, OWCP's hearing representative affirmed the January 18, 2012 schedule award determination. Appellant filed a recurrence claim under OWCP File No. xxxxxx432; however, OWCP advised that he should file an occupational disease claim.

showed central canal stenosis at C5-6 associated with moderate bilateral neural foraminal stenosis. Appellant also underwent cervical x-rays which demonstrated postoperative changes of an anterior cervical fusion at C6-7 with mild spondylosis at C4-5 and C5-6 demonstrating anterior endplate spurring.

On November 1, 2017 Dr. Robinson examined appellant due to cervical herniated disc and noted that his problems had worsened. He reported that appellant had weakness and numbness in the left shoulder and arm. Dr. Robinson diagnosed radiculopathy of cervical region as well as worsening symptomatic cervical disc herniations located above prior surgery secondary to stress and work activities.

By decision dated November 22, 2017, OWCP denied appellant's August 3, 2017 occupational disease claim, finding that he failed to identify the specific modified work duties which he felt caused or contributed to his current cervical condition. On December 22, 2017 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In a December 18, 2017 statement, appellant attributed his current cervical condition to his repetitive duties of twisting his neck and lifting his arms. He noted that on August 3, 2017, while casing mail, he experienced a debilitating pain in his neck that radiated down his right shoulder and arm.

On December 18, 2017 Dr. Robinson examined appellant due to his cervical herniated disc. He noted that appellant had left-sided neck, right shoulder, and arm pain. Dr. Robinson reported that appellant had foraminal stenosis above his prior fusion. He diagnosed post-laminectomy syndrome, cervical radiculopathy, and advanced disc disease at C5-6 and C4-5 which was causing foraminal compression and was secondary to his repetitive work activities of cervical twisting and upper extremity lifting as well as the previous surgery at C6-7 which was causing increased movement to the levels above the fusion. Dr. Robinson indicated that appellant would likely need additional surgery.

By decision dated May 18, 2018, OWCP's hearing representative found appellant had not met his burden of proof to establish his occupational disease claim as he had not provided medical evidence establishing causal relationship between his employment duties and his diagnosed cervical condition.<sup>4</sup>

On June 11, 2018 Dr. Robinson examined appellant due to worsening left posterior neck and left shoulder pain radiating into the left upper arm. On examination he found muscle spasm and moderately reduced range of motion. Dr. Robinson diagnosed post-laminectomy syndrome and cervical disc disorder with myelopathy. He found that appellant continued to exhibit cervical disc disease and radiculopathy. Dr. Robinson found that appellant was unable to work June 12 through 15, 2018 due to a flare-up of his cervical condition.

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<sup>4</sup> Appellant appealed the May 18, 2018 decision to the Board. In its March 22, 2019 Order Remanding Case, the Board directed OWCP to combine appellant's cervical claims and issue a *de novo* decision. *Supra* note 2. On April 29, 2019 OWCP combined appellant's files.

On June 20, 2018 appellant underwent additional cervical spine x-rays which demonstrated moderate endplate and facet degenerative changes at C4-5 and C5-6 with neural foraminal encroachment at C4-5 and C5-6 on the left. On July 11, 2018 Dr. Robinson examined appellant due to left lateral neck pain. On October 24, 2018 and February 21, 2019 he examined appellant due to cervical spinal stenosis. Dr. Robinson diagnosed cervical disc disorder with myelopathy and recommended that appellant continue with his work restrictions.

By decision dated May 6, 2019, OWCP denied appellant's occupational disease claim finding that he had not established causal relationship between his diagnosed condition and the accepted factors of his federal employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>6</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>7</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>8</sup>

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>9</sup> Rationalized medical opinion evidence is evidence which includes a physician's rationalized opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the established employment injury. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the accepted employment injury.<sup>10</sup>

### **ANALYSIS**

The Board finds this case is not in posture for decision.

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<sup>5</sup> *Supra* note 2.

<sup>6</sup> *L.C.*, Docket No. 19-0724 (issued September 5, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</sup> *D.W.*, Docket No. 18-1139 (issued May 21, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>8</sup> *D.W., id.*; *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>9</sup> *L.C.*, *supra* note 6; *M.B.*, Docket No. 17-1999 (issued November 13, 2018).

<sup>10</sup> *M.L.*, Docket No. 18-1605 (issued February 26, 2019).

Dr. Robinson treated appellant for his accepted conditions due to his September 2, 2008 employment injury including left shoulder strain, left trapezius strain as well as cervical strain and on June 2, 2009 performed an authorized anterior cervical discectomy and fusion at C6-7. He released appellant to return to work as a modified city letter carrier in 2010. Beginning on August 9, 2017 Dr. Robinson reported that appellant's cervical problem had worsened and diagnosed the additional condition of post-laminectomy syndrome. On November 1, 2017 he found that appellant had sustained worsening symptomatic cervical disc herniations secondary to stress from the prior fusion/injury and work activities. On December 18, 2017 Dr. Robinson diagnosed post-laminectomy syndrome, cervical radiculopathy, and advanced disc disease at C5-6 and C4-5. He opined that these conditions were causing foraminal compression and were secondary to his repetitive work activities of cervical twisting and upper extremity lifting as well as the previous surgery at C6-7. Dr. Robinson explained that appellant's previously accepted conditions, as well as his modified work duties, were causing increased movement to the levels above the fusion resulting in post-laminectomy syndrome.

The Board finds that while Dr. Robinson's reports are not completely rationalized and are insufficient to meet appellant's burden of proof to establish his occupational disease claim, they are consistent in indicating that he sustained a medical condition due to the accepted factors of federal employment and are sufficient to require OWCP to further develop the medical evidence and the case record.<sup>11</sup>

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>12</sup>

The Board will therefore remand the case for further development of the medical evidence. On remand, OWCP shall prepare a statement of accepted facts and obtain a rationalized opinion from a physician in the appropriate field of medicine as to whether the accepted work factors caused or aggravated a diagnosed medical condition. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

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<sup>11</sup> C.W., Docket No. 19-0322 (issued July 18, 2019); X.V., Docket No. 18-1360 (issued April 12, 2019); D.W., Docket No. 17-1884 (issued November 8, 2018); *John. J. Carlone*, 41 ECAB 354 (1989).

<sup>12</sup> C.W., *id.*; X.V., *id.*; S.W., Docket No. 18-0119 (issued October 5, 2018); *William J. Cantrell*, 34 ECAB 1233 (1993).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 6, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 16, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board